

ASSEMBLY BILL

No. 2441

Introduced by Assembly Member Bates

February 21, 2002

An act to add Section 3048 to the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 2441, as introduced, Bates. International child abduction prevention.

Existing federal law implements the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, which provides remedies for the wrongful removal or detention of a child in cases of international child abduction.

Existing state law provides that a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of specified laws of this state governing child custody proceedings must be recognized and enforced. Existing law also prohibits the abduction of a child from a parent or guardian entitled to the child's custody.

This bill would require, in any proceeding to determine child custody or visitation with a child, a custody order to contain, among other things, a clear description of the custody and visitation rights of each party and a provision stating that a violation of the order may subject the party who violates the order to civil or criminal penalties. The bill would require the court to consider specified factors in determining the risk of abduction of the child, including whether the party is a citizen of another country, has strong emotional or cultural ties to another country, or has indicated that he or she may attempt to, or has threatened

to, take the child to another country. The bill would also require the court to consider taking specified measures to prevent the abduction of the child.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 International Child Abduction Preventive Measures Act.

3 SEC. 2. The Legislature hereby finds and declares all of the
4 following:

5 (a) When the court of a state disregards the fact that a foreign
6 country has not entered into a treaty or agreement to accept the
7 enforcement of an order for custody or visitation issued by a court
8 in the United States, there is a serious risk that if the child is taken
9 to that country by a parent who is a resident or citizen of a foreign
10 country, the custody order issued in this country will be violated
11 or ignored.

12 (b) A foreign country will often disregard the right of an
13 American child to be raised by both parents and make a new
14 custody ruling that severely diminishes the rights of the parent
15 living in the United States, especially if that foreign country is not
16 a signatory to the Hague Convention on the Civil Aspects of
17 International Child Abduction.

18 (c) International abductions of children are on the rise and only
19 a mutually established and agreed upon plan between American
20 and foreign courts can reduce or eradicate this problem.

21 SEC. 3. Section 3048 is added to the Family Code, to read:

22 3048. (a) As used in this section, the following terms shall
23 apply:

24 (1) "Parent" means a person who has been awarded sole or
25 joint custody or visitation of a child by a court of this state.

26 (2) "Child" means a person who is 17 years of age or younger.

27 (3) "The Hague Convention on the Civil Aspects of
28 International Child Abduction," also referred to as the
29 "Convention," is an agreement adopted on October 25, 1980, at
30 The Hague, Netherlands, among various countries including the
31 United States that oppose abduction as a course of putting an end



1 to a custody matter, by calling for the abducted child to be returned
2 to the country where he or she lived prior to the abduction.

3 (b) Notwithstanding any other provision of law, in any
4 proceeding to determine child custody or visitation with a child the
5 following shall apply:

6 (1) Every custody or visitation order shall contain all of the
7 following:

8 (A) The basis for the court's exercise of jurisdiction.

9 (B) The manner in which notice and opportunity to be heard
10 was given.

11 (C) A clear description of the custody and visitation rights of
12 each party.

13 (D) A provision stating that a violation of the order may subject
14 the party in violation to civil or criminal penalties, or both, and a
15 citation to relevant provisions of state law regarding custodial
16 interference.

17 (2) In determining whether measures are needed to prevent the
18 abduction of the child by one parent, the court shall analyze the risk
19 of abduction of the child; obstacles to location, recovery, and
20 return if the child is abducted; and potential harm to the child if
21 abducted. In order to determine risk of abduction, the court shall
22 consider the following factors:

23 (A) Whether a party has previously taken a child out of this
24 state or another state in violation of a custody or visitation order.

25 (B) Whether a party has previously threatened to take a child
26 out of the state or another state in violation of a custody or
27 visitation order.

28 (C) Whether a party has strong ties to this state.

29 (D) Whether a party:

30 (i) Is a citizen of another country.

31 (ii) Has strong emotional or cultural ties to another country.

32 (iii) Has indicated that he or she may attempt to, or has
33 threatened to, take the child out of this state and to another country.

34 (E) Whether a party has friends or family living outside this
35 state.

36 (F) Whether a party does not have a financial reason to stay in
37 this state, such as whether the party is unemployed, able to work
38 anywhere, or is financially independent.

39 (G) Whether a party has engaged in planning that would
40 facilitate removal from the state, such as quitting a job, selling the

1 party's primary residence, terminating a lease, closing an account,
2 liquidating other assets, hiding or destroying documents, applying
3 for a passport, applying for a birth certificate, or applying for
4 school or medical records.

5 (H) Whether a party has a history of marital instability, lack of
6 parental cooperation, domestic violence, or child abuse.

7 (I) Whether a party has a criminal record.

8 (3) If the court makes a finding that there is a need for
9 prevention measures after considering the factors listed in
10 paragraph (2), the court shall consider taking the following
11 measures to prevent the abduction of the child:

12 (A) Supervised visitation.

13 (B) Requiring a parent to post a bond to pay for the cost of
14 recovering a child who is abducted to a foreign country by a parent
15 if the foreign country is not a signatory to the convention.

16 (C) Restricting the noncustodial parent's right to remove the
17 child from the state or the country.

18 (D) Restricting the custodial parent's right to relocate with the
19 child.

20 (E) Requiring the surrender of passports and other travel
21 documents.

22 (F) Prohibiting the issuance of a new or replacement passport
23 for the child.

24 (G) Notifying the foreign consulate of passport restrictions.

25 (H) Requiring a party to obtain a letter from a judicial authority
26 in a foreign country that is not a signatory to the convention
27 agreeing to recognize and enforce custody and visitation orders
28 issued by the court.

29 (I) Obtaining written assurance that a party will return from
30 foreign visits.

31 (J) Defining terms in the custody order to facilitate use of the
32 Hague Convention.

33 (K) Authorizing law enforcement assistance.

34 (L) Prohibiting a party from having temporary physical
35 custody of the child without the prior authorization of the court.